Re: OIG FOIA Case No. 09-00032-FOI

Mr. Grant F. Smith
Director of Research
IRmep
Calverton Station
P.O. Box 32041
Washington, DC 20007

Dear Mr. Smith:

This is in response to your Freedom of Information Act (FOIA), 5 U.S.C. § 552, request dated February 17, 2009, submitted to the Office of Information Programs and Services (IPS), U.S. Department of State. Your request was forwarded to the Office of Inspector General (OIG) for action on May 26, 2009.

You requested "a copy of the completed classified 1992 report prepared by the State Department inspector general Sherman Funk titled "Report of Audit: Department of State Defense Trade Controls."

The requested document is being denied in full pursuant to FOIA exemption (b)(1). We have also enclosed a separate sheet explaining the exemption.

You may appeal this decision within 60 days to the Chairman of the Appeals Panel of the U.S. Department of State as explained in the enclosed regulation. Appeals should be addressed to: Chairman, Appeals Review Panel, Attention: Appeals Officer, A/ISS/IPS/PP/LC, Room 8100, State Annex 2 (SA-2), U.S. Department of State, Washington, D.C. 20522-8100.

Sincerely,

Harold W. Geisel
Acting Inspector General

Enclosures: As stated
EXPLANATION OF EXEMPTIONS

The Freedom of Information Act (5 U.S.C. § 552)

- **Exemption 1 (5 U.S.C. § 552(b)(1))** – protects from disclosure information which is specifically authorized under criteria established by Executive Order to be kept classified in the interest of national defense or foreign policy.

- **Exemption 2 (5 U.S.C. § 552(b)(2))** – records related solely to internal personnel rules and practices, which, if released, would allow circumvention of an agency function. These are two profiles, LOW and HIGH.
  
  **LOW** – Records qualifying under the LOW (b)(2) profile are those that are trivial and housekeeping in nature for which there is no *legitimate public interest or benefit* to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records;

  **HIGH** – Records qualifying under HIGH (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department;

- **Exemption 3 (5 U.S.C. § 552(b)(3))** – protects information specifically exempted from disclosure by other federal statutes.

- **Exemption 4 (5 U.S.C. § 552(b)(4))** – protects from disclosure trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

- **Exemption 5 (5 U.S.C. § 552(b)(5))** – protects from disclosure inter-agency or intra-agency memoranda or letters consisting of predecisional advice, opinion or recommendations.

- **Exemption 6 (5 U.S.C. § 552(b)(6))** – exempts from disclosure records or information which if disclosed would constitute a clearly unwarranted invasion of personal privacy.

- **Exemption 7 (5 U.S.C. § 552(b)(7))** – protects from disclosure records or information compiled for law enforcement purposes to the extent that the production of such records or information:

  (A) could reasonably be expected to interfere with enforcement proceedings;
§171.52 Appeal of denial of access to, declassification of, amendment of, accounting of disclosures of, or challenge to classification of records.

(a) Right of administrative appeal. Except for records that have been reviewed and withheld within the past two years or are the subject of litigation, any requester whose request for access to records, declassification of records, amendment of records, accounting of disclosure of records, or any authorized holder of classified information whose classification challenge has been denied, has a right to appeal the denial to the Department’s Appeals Review Panel. This appeal right includes the right to appeal the determination by the Department that no records responsive to an access request exist in Department files. Privacy Act appeals may be made only by the individual to whom the records pertain.

(b) Form of appeal. There is no required form for an appeal. However, it is essential that the appeal contain a clear statement of the decision or determination by the Department being appealed. When possible, the appeal should include argumentation and documentation to support the appeal and to contest the bases for denial cited by the Department. The appeal should be sent to: Chairman, Appeals Review Panel, c/o Appeals Officer, A/ISS/IPS/PP/LC, U.S. Department of State, SA-2, Room 8100, Washington, DC 20522-8100.

(c) Time limits. The appeal should be received within 60 days of the date of receipt by the requester of the Department’s denial. The time limit for response to an appeal begins to run on the day that the appeal is received. The time limit (excluding Saturdays, Sundays, and legal public holidays) for agency decision on an administrative appeal is 20 days under the FOIA (which may be extended for up to an additional 10 days in unusual circumstances) and 30 days under the Privacy Act (which the Panel may extend an additional 30 days for good cause shown). The Panel shall decide mandatory declassification review appeals as promptly as possible.

(d) Notification to appellant. The Chairman of the Appeals Review Panel shall notify the appellant in writing of the Panel’s decision on the appeal. When the decision is to uphold the denial, the Chairman shall include in his notification the reasons therefore. The appellant shall be advised that the decision of the Panel represents the final decision of the Department and of the right to seek judicial review of the Panel’s decision, when applicable. In mandatory declassification review appeals, the Panel shall advise the requester of the right to appeal the decision to the Interagency Security Classification Appeals Panel under §3.5(d) of E.O. 12958.
provide requested information, circumstances that warrant exceptions to time limits on responding to requests, situations in which expedited processing of requests is warranted, and certain reporting requirements. In the case of the requests by the public for declassification of national security information, several executive orders have been promulgated since the Department regulations were last amended. Executive Order 12539, issued in 1995 and most recently and most substantially amended by Executive Order 13292 of March 28, 2003, effected changes in the provisions governing mandatory declassification review as well as access to agency records by historical researchers and certain former government personnel.

The final regulations take account of these changes and other changes in the law, principally by way of court decisions, as well as changes in the Department's procedures designed to implement them.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Confidential business information, Freedom of information, Privacy.

Chapter 1 of Title 22 of the Code of Federal Regulations is amended by revising part 171 to read as follows:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Subpart A—General Policy and Procedures

Sec.

171.1 Availability of information.

171.2 Types of records maintained.

171.3 Public reading room.

171.4 Electronic reading room.

171.5 Requests for information—types and how made.

171.6 Archival records.


§ 171.10 Purpose and scope.

§ 171.11 Definitions.

§ 171.12 Processing requests.

§ 171.13 Business information.

§ 171.14 Fees to be charged—general.

§ 171.15 Fees to be charged—categories of requesters.

§ 171.16 Miscellaneous fee provisions.

§ 171.17 Waiver or reduction of fees.

Subpart C—Executive Order 12958

§ 171.20 Definitions.

§ 171.21 Declassification review.

§ 171.22 Appeals.

§ 171.23 Declassification in the public interest.

§ 171.24 Access by historical researchers and certain former government personnel.

§ 171.25 Applicability of other laws.

Subpart D—Privacy Act Provisions

§ 171.30 Purpose and scope.

§ 171.31 Definitions.

§ 171.32 Request for access to records.

§ 171.33 Request to amend or correct records.

§ 171.34 Request for an accounting of record disclosure.

§ 171.35 Denials of requests; appeals.

§ 171.36 Exemptions.

Subpart E—Ethics in Government Provisions

§ 171.40 Purpose and scope.

§ 171.41 Covered employees.

§ 171.42 Requests and identifying information.

§ 171.43 Time limits and fees.

§ 171.44 Improper use of records.

Subpart F—Appeals Procedures

§ 171.50 Appeals of denials of expedited processing.

§ 171.51 Appeals of denials of fee waivers or reductions.

§ 171.52 Appeals of denial of access to declassification of, amendment of, or accounting of disclosures of records.


Subpart G—Archival records

§ 171.60 Further information.

PART 172—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Subpart A—General Policy and Procedures

§ 172.1 Availability of information.

§ 172.2 Types of records maintained.

§ 172.3 Public reading room.

§ 172.4 Electronic reading room.

§ 172.5 Requests for information—types and how made.

§ 172.6 Archival records.


§ 172.10 Purpose and scope.

§ 172.11 Definitions.

§ 172.12 Processing requests.

§ 172.13 Business information.

§ 172.14 Fees to be charged—general.

§ 172.15 Fees to be charged—categories of requesters.

§ 172.16 Miscellaneous fee provisions.

§ 172.17 Waiver or reduction of fees.

Subpart C—Executive Order 12958

§ 172.20 Definitions.

§ 172.21 Declassification review.

§ 172.22 Appeals.

§ 172.23 Declassification in the public interest.

§ 172.24 Access by historical researchers and certain former government personnel.

§ 172.25 Applicability of other laws.

Subpart D—Privacy Act Provisions

§ 172.30 Purpose and scope.

§ 172.31 Definitions.

§ 172.32 Request for access to records.

§ 172.33 Request to amend or correct records.

§ 172.34 Request for an accounting of record disclosure.

§ 172.35 Denials of requests; appeals.

§ 172.36 Exemptions.
to which the record has been integrated into the Department's record keeping system or files.

(g) Direct costs means those costs the Department incurs in searching for, duplicating, and, in the case of commercial requests, reviewing documents in response to a FOIA request. The term does not include overhead expenses.

(h) Search costs means those costs the Department incurs in looking for, identifying, and retrieving material, in paper or electronic form, that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department shall attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester.

(i) Duplicating costs means those costs the Department incurs in copying a requested record in a form appropriate for release in response to a FOIA request. Such copies may take the form of paper copy, microfilm, audio-visual materials, or machine-readable documentary (e.g., disk or CD-ROM), among others.

(j) Review costs means costs the Department incurs in examining a record to determine whether and to what extent the record is responsive to the FOIA request and the extent to which it may be disclosed to the requester. It does not include costs of resolving general legal or policy issues that may be raised by a request.

(k) Unusual circumstances. As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term "unusual circumstances" means:

(1) The need to search for and collect the requested records from Foreign Service posts or other separate and distinct Department offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separable and distinct records that are demanded in a single request; or

(3) The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the Department that have a substantial subject matter interest therein. Such consultation shall be conducted with all practicable speed.

(l) Commercial use request means a request from or on behalf of one who requests information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the use to which the requester will put the information requested.

(m) Educational institution means a school, public or private elementary or secondary school, an institution of higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(n) Non-commercial scientific institution means an institution that is not operated on a "commercial" basis, as that term is used in paragraph (l) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news media means information that is about current events or that would be of current interest to the public. News media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate, such as by past publication, a likelihood of publication through a representative of the news media, even though not actually employed by it.

(p) All other representative of an individual or organization not covered by a definition in paragraphs (l), (m), (n), or (o) of this section.

§ 171.12 Processing requests.

The Information and Privacy Coordinator is responsible for acting on all initial requests except for requests for records coming under the jurisdiction of the Bureau of Consular Affairs, the Bureau of Diplomatic Security, the Bureau of Human Resources, the Office of Medical Services, and the Office of the Inspector General.

(a) Third party requests. Except for requests under the Privacy Act by a parent of a minor or by a legal guardian (§ 171.32(c)), requests for records pertaining to another individual shall be processed under the FOIA and must be accompanied by written authorization for access by the individual, notarized or made under penalty of perjury, or by proof that the individual is deceased (e.g., death certificate or obituary).

(b) Expedited processing. Requests and appeals shall be taken out of order and given expedited treatment whenever a requestor has demonstrated that a "compelling need" for the information exists. A request for expedited processing may be made at the time of the initial request for records or at any later time. The request for expedited processing shall be made with specificity the facts on which the request is based. A notice of the determination whether to grant expedited processing shall be provided to the requester within 10 days of the date of the receipt of the request. A "compelling need" is deemed to exist where the requester can demonstrate one of the following:

(1) Failure to obtain requested information on an expedited basis could reasonably be expected to: Pose an imminent threat to the life or physical safety of an individual; impair substantial due process rights; or harm substantial humanitarian interests.

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(i) Urgently needed. The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only

(j) Actual or alleged Federal Government activity. The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

(c) Application of denial of expedited processing. Any denial of a request for expedited processing may be appealed in accordance with the appeal procedure set forth in § 171.50.

(d) Time limits. The statutory time limits for responding to a FOIA request or to an appeal from a denial of a FOIA request is 20 days. In unusual circumstances, as defined in § 171.11(k), the time limits may be extended by the
§ 171.15 Fees to be charged—categories of requesters.

Under the FOIA, there are four categories of requesters: Commercial use requesters, educational and non-commercial scientific institution requesters, representatives of the news media, and all other requesters. The fees for each of these categories are:

(a) Commercial use requesters. When the Department receives a request for documents for commercial use as defined in § 171.11(l), it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 171.18(b)).

(b) Educational and non-commercial scientific institution requesters. The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution, as defined in § 171.11(m) and (n), and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) Representatives of the news media. The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.11(o), and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the medium shall not be considered to be a commercial use request.

(d) All other requesters. The Department shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

§ 171.16 Miscellaneous fee provisions.

(a) Charging Interest. The Department shall begin assessing interest charges on an unpaid bill following on the 31st day following the day on which the bill was sent. The fact that the fee has been received by the Department within the thirty-day grace period, even if not processed, shall stay the accrual of interest. Interest will be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of the billing.

(b) Charges for unsuccessful search or if records are withheld. The Department may assess charges for time spent searching, even if it fails to locate the records or if the records located are determined to be exempt from disclosure.

(c) Advance payment. The Department may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) It estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. In such a case, the Department shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or shall require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay within 30 days of the date of the billing a fee charged. In such a case, the Department shall require the requester to pay the full amount previously owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new or pending request from that requester. If a requester has failed to pay a fee charged by another U.S. Government agency in an information access case, the Department may require proof that such fee has been paid before processing a new or pending request from that requester.

(3) When the Department acts under paragraph (c)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after the Department has received fee payments described in paragraphs (c)(1) and (2) of this section.

(d) Aggregating requests. When the Department reasonably believes that a requester, or a group of requesters acting in concert, has submitted multiple requests involving related matters solely to avoid payment of fees, the Department may aggregate those requests for purposes of assessing processing fees.

(e) Effect of the Debt Collection Act of 1982 (Pub. L. 97-365). The Department shall comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to effect repayment.

§ 171.17 Waiver or reduction of fees.

(a) Fees otherwise chargeable in connection with a request for disclosure...
fails to make such election, the request will be under the process that would result in the greatest disclosure unless the information requested is subject to only mandatory declassification review.

(d) Description of information sought. In order to be processed, a request for declassification review must describe the document or the material containing the information sought with sufficient specificity to enable the Department to locate the document or material with a reasonable amount of effort. Whenever a request does not sufficiently describe the material, the Department shall notify the requester that no further action will be taken unless additional description of the information sought is provided.

(e) Refusal to confirm or deny existence of information. The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of existence or nonexistence is itself classified.

(f) Processing. In responding to mandatory declassification review requests, the Department shall make a review determination as promptly as possible and notify the requester accordingly. When the requested information cannot be declassified in its entirety, the Department shall release all meaningful portions that can be declassified and that are not exempt from disclosure on other grounds (see §171.25).

(g) Other agency information. When the Department receives a request for information in its possession that was originally classified by another agency, it shall refer the request and the pertinent information to the other agency for processing unless that agency has agreed that the Department may review such information for declassification on behalf of that agency. The Department may, after consultation with the other agency, inform the requester of the referral unless the requester agrees to the Department reviewing the information in question. That official, after consultation with the Assistant Secretary for Public Affairs, will determine whether the public interest in disclosure outweighs the damage to national security that reasonably could be expected from disclosure. If the determination is made that the information should be declassified and disclosed, that official will make such a recommendation to the Secretary or the senior agency official who shall make the decision on declassification and disclosure. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural right subject to judicial review.

§171.24 Access by historical researchers and certain former government personnel.

(a) The restriction in E.O. 12958 and predecessor orders on limitations to classified information to individuals who have a need-to-know the information may be waived, under the conditions set forth below, for persons who:

(1) Are engaged in historical research projects;

(2) Have served as Presidential or Vice Presidential appointees as defined in §171.20(i) or

(3) Served as President or Vice President.

(b) Requests by such persons must be submitted in writing to the Information and Privacy Coordinator at the address set forth in §171.5 and must include a general description of the records sought, the time period covered by the request, and an explanation why access is sought. Requests for access by such requesters may be granted if:

(1) The Secretary or the Senior Agency Official determines in writing that access is consistent with the interests of national security;

(2) The requester agrees in writing to safeguard the information from unauthorized disclosure or compromise;

(3) The requester submits a statement in writing authorizing the Department to review any notes and manuscripts created as a result of access;

(4) The requester submits a statement in writing that any information obtained from review of the records will not be disseminated without the express written permission of the Department;

(5) If a requester uses a research assistant, the requester and the research assistant must both submit a statement in writing acknowledging that the same access conditions set forth in paragraph (b)(4) of this section apply to the research assistant. Such a research assistant must be working for the applicant and not gathering information for publication on his or her own behalf.

(d) Access granted under this section shall be limited to items the appointee originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or as President or Vice President.

(e) Such requesters may seek declassification and release of material to which they have been granted access under this section through either the FOIA or the mandatory declassification review provisions of E.O. 12958. Such requests shall be processed in the order received, along with other FOIA and mandatory declassification review requests, and shall be subject to the fees applicable to FOIA requests.

§171.25 Applicability of other laws.

Exemptions from disclosure set forth in the Freedom of Information Act, the Privacy Act, and other statutes or privileges protecting information from disclosure recognized in discovery or other such litigation-related procedures may be applied to withhold information declassified under the provisions of this subpart.
§ 171.35 Denials of requests; appeals.

If the Department denies a request for access to Privacy Act records, for amendment of such records, or for an accounting of disclosure of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial to the Appeals Review Panel in accordance with § 171.52.

§ 171.36 Exemptions.

Systems of records maintained by the Department are authorized to be exempted from certain provisions of the Privacy Act under both general and specific exemptions set forth in the Act. In utilizing these exemptions, the Department is exempting only those portions of systems that are necessary for the proper functioning of the Department and that are consistent with the Privacy Act. Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by the Department or the OIG, in the sole discretion of the Department or the OIG, as appropriate.

(a) General exemptions. (1) Individuals may not have access to records maintained by the Department that were provided by another agency that has determined that such information is subject to general exemption under 5 U.S.C. 552a(j)1). If such exempt records are the subject of an access request, the Department will advise the requester of their existence and of the name and address of the source agency, unless that information is itself exempt from disclosure.

(2) The systems of records maintained by the Bureau of Diplomatic Security (STATE-26), the Office of the Inspector General (STATE-38), and the Information Access Program Records system (STATE-35) are subject to general exemption under 5 U.S.C. 552a(j)2). All records contained in record system STATE-38, Security Records, are exempt from all provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to protect the life and safety of any individual, to avoid premature disclosure of the knowledge of potential criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process. All records contained in the Information Access Program Records system (STATE-35) are exempt from all of the provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(8), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to protect the law enforcement information retrieved from various sources in response to information access requests.

(b) Specific exemptions. Portions of the following systems of records are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), and (4), (5), (H), (I), and (J).

The names of the systems correspond to those published in the Federal Register by the Department. (1) Exempt under 5 U.S.C. 552a(k)(1)

The reason for invoking this exemption is to protect material required to be kept secret in the interest of national defense and foreign policy.

Board of Appeal Review Records. STATE-02.

Congressional Correspondence. STATE-43.

Congressional Travel Records. STATE-44.

Coordinator for the Combating of Terrorism Records. STATE-06.


Extradition Records. STATE-11.


Human Resources Records. STATE-31.

Information Access Programs Records. STATE-55.

Intelligence and Research Records. STATE-15.

International Organizations Records. STATE-17.


Military Manpower Control Records. STATE-42.
(b) Officers or employees in any other positions determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;
(c) Employees in the excepted service in positions that are of a confidential or policy-making character, unless by regulation their positions have been excluded by the Director of the Office of Government Ethics;
(d) The designated agency official who acts as the Department’s Ethics Officer;
(e) Incumbent officials holding positions referred to above if they have served 61 days or more in the position during the preceding calendar year.
(f) Officials who have terminated employment from a position referred to above and who have not accepted another such position within 30 days of such termination.

§ 171.42 Requests and identifying information.

Requests for access to public financial disclosure reports of covered employees should be made in writing to the Information and Privacy Coordinator at the address given in § 171.5 setting forth:
(a) The name and/or position title of the Department of State official who is the subject of the request,
(b) The time period covered by the report requested,
(c) A completed Office of Government Ethics request form, OGE Form 201, October 1999. This form may be obtained by writing to the Information and Privacy Coordinator or by visiting the Public Reading Room described in § 171.3 or http://www.usa.gov.

§ 171.43 Time limits and fees.

(a) Reports shall be made available within thirty (30) days from receipt of a request by the Department. The Department does not charge a fee for a single copy of a public financial report. However, the Department will charge for additional copies of a report at a rate of 15 cents per page plus the actual direct cost of mailing the reports. However, the Department will not charge for individual requests if the total charge would be $10.00 or less.
(b) A request shall be retained by the Department and made available to the public for a period of six (6) years after receipt of such report. After such a six-year period, the report shall be destroyed, unless needed in an ongoing investigation, except that those reports filed by individuals who are nominated for office by the President to a position that requires the advice and consent of the Senate, and who subsequently are not confirmed by the Senate, will be retained and made available for a one-year period, and then destroyed, unless needed in an ongoing investigation.

§ 171.44 Improper use of reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a financial disclosure report:
(1) For any unlawful purpose;
(2) For any commercial purpose, other than for news or community dissemination to the general public;
(3) For determining or establishing the credit rating of any individual;
(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.
(b) The court in which such action is brought may assess a civil penalty not to exceed $10,000 against any person who obtains or uses the reports for those prohibited purposes. Such remedy shall be in addition to any other remedy available under statutory or common law.

Subpart F—Appeal Procedures

§ 171.50 Appeal of denial of expedited processing.

(a) A denial of a request for expedited processing may be appealed to the Chief of the Requester Liaison Division of the office of the Information and Privacy Coordinator at the address given in § 171.5 within 30 days of receipt of the denial. Appeals should contain as much information and documentation as possible to support the request for expedited processing in accordance with the criteria set forth in § 171.12(b)
(b) The Requester Liaison Division Chief will issue a final decision in writing within ten (10) days from the date on which the office of the information and Privacy Coordinator receives the appeal.

§ 171.51 Appeals of denial of fee waivers or reductions.

(a) A denial of a request for a waiver or reductions of fees may be appealed to the Chief of the Requester Liaison Division of the Office of the Information and Privacy Coordinator at the address given in § 171.5 within 30 days of receipt of the denial. Appeals should contain as much information and documentation as possible to support the request for fee waiver or reduction in accordance with the criteria set forth in § 171.17.
(b) The Requester Liaison Division Chief will issue a final decision in writing within 30 days from the date on which the office of the Information and Privacy Coordinator receives the appeal.

§ 171.52 Appeal of denial of access to, declassification of, amendment of, accounting of disclosures of, or challenge to classification of records.

(a) Right of administrative appeal.

Except for records that have been reviewed and withheld within the past two years or are the subject of litigation, any requester whose request for access to records, declassification of records, amendment of records, accounting of disclosures of records, or any authorized holder of classified information whose classification challenge has been denied, has a right to appeal the denial to the Department’s Appeals Review Panel. This appeal right includes the right to appeal the determination by the Department that no records responsive to an access request exist in Department files. Privacy Act appeals may be made only by the individual to whom the records pertain.
(b) Form of appeal. There is no required form for an appeal. However, it is essential that the appeal contain a clear statement of the decision or determination by the Department being appealed. When possible, the appeal should include argumentation and documentation to support the appeal and to contest the bases for denial cited by the Department. The appeal should be sent to: Chairman, Appeals Review Panel, c/o Information and Privacy Coordinator/Appeals Officer, at the address given in § 171.5.
(c) Time limits. The appeal should be received within 60 days of the date of receipt by the requester of the Department’s denial. The time limit for response to an appeal begins to run on the day that the appeal is received. The time limit (excluding Saturdays, Sundays, and legal public holidays) for agency decision on an administrative appeal is 20 days under the FCIA (which may be extended for up to an additional 10 days in unusual circumstances) and 30 days under the Privacy Act (which, the Panel may extend an additional 30 days for good cause shown). The Panel shall decide mandatory declassification review appeals as promptly as possible.
(d) Notification to appellant. The Chairman of the Appeals Review Panel shall notify the appellant in writing of the Panel’s decision on the appeal.

When the decision is to uphold the denial, the Chairman shall include in his notification the reasons therefore. The appellant shall be advised that the decision of the Panel represents the final decision of the Department and of the right to seek judicial review of the Panel’s decision, when applicable. In mandatory declassification review appeals, the Panel shall advise the
request of the right to appeal the decision to the Interagency Security Classification Appeals Panel under § 3.5(d) of E.O. 12958.

 Procedure in Privacy Act amendment cases. (1) If the Panel's decision is that a record shall be amended in accordance with the appellant's request, the Chairman shall direct the office responsible for the record to amend the record, advise all previous recipients of the record of the amendment and its substance if an accounting of disclosure has been made, and so advise the individual in writing.

 (2) If the Panel's decision is that the request of the appellant to amend the record is denied, in addition to the notification required by paragraph (d) of this section, the Chairman shall advise the appellant:

 (i) Of the right to file a concise statement of the reasons for disagreeing with the decision of the Department;
 (ii) Of the procedures for filing the statement of disagreement;
 (iii) That any statement of disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;
 (iv) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

 (3) If the appellant files a statement under paragraph (a)(2) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to the record. When information that is the subject of a statement of dispute filed by an individual is subsequently disclosed, the Department will note that the information is disputed and provide a copy of the individual's statement. The Department may also include a brief summary of reasons for not amending the record when disclosing disputed information. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under these regulations.


 Leo R. Lehman
 Deputy Assistant Secretary for Records and Publishing Services, Bureau of Administration, Department of State.
 [FR Doc. 04-24581 Filed 11-2-04; 8:45 am]
 BILLING CODE 4710-24-P

 POSTAL SERVICE

 39 CFR Part 20
 Discontinuance of Volume Discount Availability for IFA and ISAL Mailers

 AGENCY: Postal Service.

 ACTION: Final rule.

 SUMMARY: This final rule deletes International Mail Manual (IMM) paragraphs 292.212, 292.213, and 295.75, which authorized mailers who spent $2 million or more combined on International Priority Airmail (IPA) and International Surface Air Lift (ISAL) in the preceding Postal Service fiscal year to receive discounted postage rates.


 FOR FURTHER INFORMATION CONTACT: Rick Klutta, 260-265-7256.

 SUPPLEMENTARY INFORMATION: On July 28, 2004, the Postal Service published for comment in the Federal Register (69 FR 45002-45003) a proposed rule to delete standards that authorize postage discounts for mailers who spend $2 million or more combined on International Priority Airmail (IPA) and International Surface Air Lift (ISAL) in the preceding Postal Service fiscal year. The Postal Service proposed to discontinue these discounts due to recent Postal Service reviews of costs for providing these services. These cost reviews identified increases in transportation, terminal dues, and other costs that have all risen while published rates for IPA and ISAL have remained static since 2001. When costs rise above the rate we are charging, we are obligated to adjust prices and discounts (in this case IPA and ISAL) so they are not subsidized by other domestic or international product offerings. Moreover, since 1998, transportation costs, terminal dues costs, and other costs have risen while published rates for IPA and ISAL have remained static since 2001.

 The other comment was made by an international mailer who enters mail under an ICM agreement. The mailer stated that IPA was a very good service and they did not want to lose their current discount. Since this proposed rule does not address ICMs, this comment falls outside the scope of this rulemaking and therefore will not be addressed at this time. Additionally, nothing in this change precludes this mailer from entering IPA and ISAL mailings under their existing ICM agreement.

 For the reasons discussed above, the Postal Service adopts the following amendment to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 20.

 List of Subjects in 39 CFR Part 20
 International postal service, Foreign relations.

 PART 20—AMENDED

 1. The authority citation for 39 CFR part 20 continues to read as follows: Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407 and 408.

 2. Amend the International Mail Manual as set forth below:

 International Mail Manual (IMM)
 290 Commercial Services
 292 International Priority Airmail Service
 292.2 Postage
 292.21 Rates

Records of the Office of White House Liaison. STATE-34.

Rover Records. STATE-41.

Security Records. STATE-36.

Senior Personnel Appointments Records. STATE-47.

Exempt under 5 U.S.C. 552a(k)(4). The reason for invoking this exemption is to prevent the compromise of testing or evaluation material used solely to determine individual qualifications for employment or promotion and to avoid giving unfair advantage to individuals by virtue of their having access to such material.

Foreign Service Institute Records. STATE-14.

Human Resources Records. STATE-31.

Information Access Programs Records. STATE-35.


Personnel Cross-Reference Index to the Central Foreign Policy Records. STATE-29.


(5) Exempt under 5 U.S.C. 552a(k)(5). The reasons for invoking this exemption are to ensure the proper functioning of the investigatory process, to ensure effective determination of suitability, eligibility, and qualification for employment and to protect the confidentiality of sources of information.


Human Resources Records. STATE-31.

Information Access Programs Records. STATE-35.


(6) Exempt under 5 U.S.C. 552a(k)(6). The reasons for invoking this exemption are to prevent the compromise of testing or evaluation material used solely to determine individual qualifications for employment or promotion and to avoid giving unfair advantage to individuals by virtue of their having access to such material.

Foreign Service Institute Records. STATE-14.

Human Resources Records. STATE-31.

Information Access Programs Records. STATE-35.


Personnel Cross-Reference Index to the Central Foreign Policy Records. STATE-29.

Subpart E—Ethics in Government Act

Provisions

§171.10 Purpose and scope.

This subpart sets forth the regulations under which persons may request access to the public financial disclosure reports of employees of the Department as well as limits to such requests and use of such information. The Ethics in Government Act 1978, as amended, and the Office of Government Ethics implementing regulations, 5 CFR part 2634, require that high-level Federal officials disclose publicly their personal financial interests.

§171.41 Covered employees.

(a) Officers and employees (including special Government employees as defined in 18 U.S.C. 202) whose positions are classified at grades GS-16 and above of the General Schedule, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than the 120% of the minimum rate of basic pay for GS-15 of the General Schedule:
Subpart D—Privacy Act Provisions

§ 171.30 Purpose and scope.

This subpart contains the rules that the Department follows under the Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual’s name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Department. If any records retrieved pursuant to an access request under the Privacy Act are found to be exempt from disclosure under that Act, they will be processed for possible disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552. No fees shall be charged for access to or amendment of Privacy Act records.

§ 171.31 Definitions.

As used in this subpart, the following definitions shall apply:

(a) Department means the United States Department of State, including its field offices and Foreign Service posts abroad.

(b) Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) Maintain includes maintain, collect, use, or disseminate.

(d) Record means any item, collection, or grouping of information about an individual that is maintained by the department, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, that contains the individual’s name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

(e) System of Records means a group of any records under the control of the Department from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

(f) Control has the meaning set forth in § 171.11(f).

(g) Information and Privacy Coordinator has the meaning set forth in § 171.11(d).

(OIG) is the abbreviation for the Office of the Inspector General of the United States Department of State.

§ 171.32 Request for access to records.

(a) Description of records sought. All requests for access to a record must reasonably describe the System of Records and the individual’s record within the system in sufficient detail to permit identification of the requested record. At a minimum, requests should include the individual’s full name (including maiden name, if appropriate) and any other names used, present mailing address and ZIP Code, date and place of birth, and any other information that might help in identifying the record. Helpful data includes the approximate time period of the record and the circumstances that give the individual reason to believe that the Department maintains a record under the individual’s name or personal identifier. In certain instances, it may be necessary for the Department to request additional information from the requester, either to ensure a full search, or to ensure that a record retrieved does in fact pertain to the individual.

(b) Verification of personal identity. The Department will require reasonable identification of individuals requesting records under the Privacy Act to ensure that records are disclosed only to the proper persons. Requesters must state their full name, current address, date and place of birth, and, at the requester’s option, social security number. The request must be signed, and the requester’s signature must be either notarized or submitted under penalty of perjury. In lieu of notarization, a statement, under penalty of perjury, that the requester has also used the other name must be included.

(c) Third party access. The Department shall allow third party access to records under certain conditions:

(i) Parents. Upon presentation of documentation of the parental relationship, a parent of a minor (an unmarried person under the age of 18) may, on behalf of the minor, request records pertaining to the minor and the Department may, in its discretion, disclose such records to the parent to the extent determined by the Department to be appropriate in the circumstances of the case. In any case, minors may request such records on their own behalf.

(ii) Guardians. A guardian of a minor or of an individual who has been declared by a court to be incompetent may act for and on behalf of the minor or the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(iii) Authorized representatives or designees. When an individual wishes to authorize another person or persons access to his or her records, the individual shall submit, in addition to the identifying information described in paragraph (b) of this section, a signed statement, either notarized or made under penalty of perjury, authorizing and consenting to access by a designated person or persons. Such requests shall be processed under the FOIA (see § 171.32).

(d) Records relating to civil actions. Nothing in this subpart entitles an individual to access any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Time limits. The Department will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

(f) Information on amending records. At the time the Department grants access to a record, it will also furnish guidelines for requesting amendment of a record. These guidelines may also be obtained by writing to the Information and Privacy Coordinator at the address given in § 171.5. The guidelines are also available in the reading room described in § 171.3 and in the electronic reading room described in § 171.4.

§ 171.33 Request to amend or correct records.

(a) An individual has the right to request that the Department amend a record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing and mailed or delivered to the Information and Privacy Coordinator at the address given in § 171.5, who will coordinate the review of the request with the appropriate officer of the Department. The Department will require verification of personal identity as provided in § 171.32(b) before it will initiate action to amend a record. Amendment requests should contain, as a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The requester shall submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.
of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Department will consider the following four factors:

(i) The subject of the request, i.e., whether the subject of the requested record concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed, i.e., whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to public understanding, including whether the requester has expertise in the subject area as well as the intention and ability to disseminate the information to the public; and

(iv) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Department will consider the following two factors:

(i) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) The Department may refuse to consider waiver or reduction of fees for requests (parsings or organizations) from whom unpaid fees are owed to the Department for another information access request.

(c) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for only those records.

(d) The Department's decision to refuse to waive or reduce fees may be appealed in accordance with § 171.81.

Subpart C—Executive Order 12958 Provisions

§ 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) Agency means any executive branch agency, as defined in 5 U.S.C. 105, any military department, as defined by 5 U.S.C. 102, and any other entity within the executive branch that comes into possession of classified information.

(b) Classified information means information that has been determined pursuant to E.O. 12958 or any predecessor order on national security information to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(c) Declassification means the authorized change in the status of information from classified information to unclassified information.

(d) Department means the U.S. Department of State, including its field offices and Foreign Service posts abroad.


(f) Foreign government means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, source of the information, or both, are to be held in confidence; and

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(3) Information received and treated as foreign government information under the terms of a predecessor executive order.

(g) Information means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics that is owned by, produced by or for, or is under the control of the United States Government.

(h) Mandatory declassification review means the process by which specific classified information is reviewed for declassification pursuant to a request under § 171.21.

(i) National Security means the national defense or foreign relations of the United States.

(j) Certain former government personnel includes former officials of the Department of State or other U.S. Government agencies who previously have occupied policy-making positions to which they were appointed by the President under 3 U.S.C. 105(a)(3)(A) or by the Vice President under 3 U.S.C. 105(a)(1)(A). It does not include former Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

(k) Senior Agency Official means the Under Secretary of State for Management.

§ 171.21 Declassification review.

(a) Scope. All information classified under E.O. 12958 or predecessor orders shall be subject to declassification review upon request by a member of the public or a U.S. government employee or agency with the following exceptions:

(1) Information originated by the incumbent President or, in the performance of executive duties, the incumbent Vice President; the incumbent President's White House staff or, in the performance of executive duties, the incumbent Vice President's staff, committees, commissions, or boards appointed by the incumbent President; other entities within the Executive Office of the President that solely advise and assist the incumbent President;

(2) Information that is the subject of litigation.

(3) Information that has been reviewed for declassification within the past two years; and

(4) Information exempted from search and review under the Central Intelligence Agency Information Act.

(b) Requests. Requests for mandatory declassification review should be addressed to the Information and Privacy Coordinator at the address given in Sec. 171.5. E-mail requests are not accepted at this time.

(c) Mandatory declassification review and the FOIA. A mandatory declassification review request is separate and distinct from the request for records under the FOIA. When any requester submits a request under both mandatory declassification review and the FOIA, the Department shall require the requester to elect review under one process or the other. If the requester
Information and Privacy Coordinator for not more than 10 days, excepting Saturdays, Sundays, or legal public holidays.

(e) Multitrack processing. The Department may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request. The Department may provide requesters in a slower track an opportunity to limit the scope of their request in order to qualify for faster processing.

(f) Form or format of response. The Department shall provide requested records in any form or format sought by the requester if the record is readily reproducible in that form or format through reasonable efforts.

§ 171.13 Business information.

(a) Business information obtained by the Department from a submitter will be disclosed under the FOIA only in compliance with this section.

(b) Definitions. For purposes of this section:

(1) Business information means information obtained by the Department from a submitter that arguably may be exempt from disclosure as privileged or confidential under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from which the Department obtains business information. The term includes corporations, partnerships, sole proprietorships, State, local, and tribal governments, and foreign governments.

(c) Designation of business information. A submitter of information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of such submission that it considers exempt from disclosure under Exemption 4.

These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) Notice to submitters. The Department shall provide a submitter with prompt written notice of a FOIA request or administrative appeal of a denial of such a request that seeks its information whenever required under paragraph (c) of this section, except as provided in paragraph (a) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice shall either describe the information requested or include copies of the requested records or record portions containing the information.

(e) When notice is required. Notice shall be given to a submitter whenever:

(1) The information has been designated by good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Department has reason to believe that the information may not be protected from disclosure under Exemption 4.

(f) When notice is not required. The notice requirements of paragraphs (d) and (e) of this section shall not apply if:

(1) The Department determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the Department shall, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(g) Opportunity to object to disclosure. The Department will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period in the notice. If a submitter has any objection to disclosure, a detailed written statement in support of the objection must be submitted. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(h) Notice of intent to disclose. The Department shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the Department decides to disclose business information over the objection of a submitter, it shall give the submitter written notice, which shall include:

(1) A statement of the reason why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(i) Notice of lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of information, the Department shall promptly notify the submitter.

(j) Notice to requester. Whenever the Department provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the Department shall also notify the requester. Whenever the Department notifies a submitter of its intent to disclose requested information under paragraph (d) of this section, the Department shall also notify the requester. Whenever a requester files a lawsuit seeking to prevent the disclosure of business information, the Department shall notify the requester.

§ 171.14 Fees to be charged—general.

The Department shall seek to charge fees that recoup the full allowable direct costs it incurs in processing a FOIA request. The Department shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Department will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Department shall provide the first two hours of search time for the first 100 pages of duplication without charge. By making a FOIA request, the requester shall be considered to have agreed to pay all applicable fees up to $25.00 unless a fee waiver has been granted.

(2) Searches for responsive records. If the Department estimates that the search costs will exceed $25.00, the requester shall be so notified. Such notice shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet the requester's needs at a lower cost. The request shall not be processed further unless the requester agrees to pay the estimated fees.

(1) Manual searches. The Department shall charge at the salary rate (i.e., basic pay plus 16 percent of basic pay) of the employee making the search.

(2) Computer searches. The Department will charge at the actual direct cost of providing the service. This
§ 171.5 Requests for information—types and how made.

(a) Requests for records in accordance with this chapter may be made by mail addressed to the Information and Privacy Coordinator, U.S. Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–6001. Facsimile requests under the FOIA only may be sent to: (202) 261–8579. E-mail requests cannot be accepted at this time. Requesters are urged to indicate clearly on their requests the provision of law under which they are requesting information. This will facilitate the processing of the request by the Department. In any case, the Department will process the request under the provision of law that provides the greatest access to the requested records.

(b) Requests may also be made by the public in person from 8:15 a.m. to 5 p.m. at the Department of State, SA–2, 515 22nd Street, NW., Washington, DC.

(c) Although no particular request format is required, it is essential that a request reasonably describe the Department records that are sought. The burden of adequately identifying the records requested lies with the requester. Requests should be specific and include all pertinent details about the request. For FOIA requests, the request should include the subject, timeframe, any individuals involved, and reasons why the Department is believed to have records on the subject of the request. For Privacy Act requests, the request should state the type of records sought, the complete name and date and place of birth of the subject of the request, and the timeframe for the records. An original signature is required. See § 171.12(b) for guidance regarding third party requests. Individuals may seek assistance regarding any aspect of their requests from the Chief, Requester Liaison Division. (202) 261–8484.

(d) While every effort is made to guarantee the greatest possible access to all requestors regardless of the specific statute under which the information is requested, the following guidance is provided for individuals in requesting records:

(i) Freedom of Information Act. Requests for documents concerning the general activities of government and of the Department of State in particular (see subpart B of this part).

(ii) E.O. 12958. Requests for declassification of specific Department records and requests for access to such records by historical researchers and certain former government officials (see subpart C of this part).

(iii) Privacy Act. Requests from U.S. citizens or legal permanent resident aliens for records that pertain to them and that are maintained by the Department under the individual's name or personal identifier (see subpart D of this part).

(iv) Ethics in Government Act. Requests for the financial Disclosure Statements of Department Employees covered by this Act (see subpart E of this part).

(e) First-in-first-out processing. As a general matter, information access requests are processed in the order in which they are received. However, if the request is specific and the search can be narrowed, it may be processed more quickly.

(f) Cut-off date. In determining which records are responsive to a request, the Department ordinarily will include only records in its possession as of the date the search for responsive documents is initiated, unless the requester has specified an earlier time frame.

(g) Records previously withheld or in litigation. Requests shall not be processed for records that have been reviewed and withheld within the past two years or whose withholding is the subject of litigation.

§ 171.10 Archival records.

The Department ordinarily transfers records to the National Archives when they are 25 years old. Accordingly, requests for records 25 years old or older should be addressed to: Archives II, 8601 Adelphi Road, National Archives at College Park, MD 20740–6001.


§ 171.10 Purpose and scope.

This subpart contains the rules that the Department follows under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The rules should be read together with the FOIA which provides additional information about access to records and contains the specific exemptions that are applicable to withholding information. Privacy Act records determined to be exempt from disclosure under the Privacy Act are processed as well under the FOIA and are subject to this subpart.
additional information or documentation.
(2) A consumer might provide a law enforcement report similar to the report in paragraph (c)(1) of this section but certain important information such as the consumer's date of birth or Social Security number may be missing because the consumer chose not to provide it. The information furnished or consumer reporting agency could accept this report, but it would be reasonable to require that the consumer provide the missing information.
(3) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred in such a case, it would be reasonable for an information furnish or consumer reporting agency to ask that the consumer fill out and have notarized the Commission ID Theft Affidavit or a similar form and provide some form of identification documentation.
(4) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for an extended fraud alert. In this case, it would not be reasonable for a consumer reporting agency to require additional documentation or information, such as a notarized affidavit.

2. Add Part 613 to read as follows:

PART 613—DURATION OF ACTIVE DUTY ALERTS

Sec. 613.1 Duration of active duty alerts

§613.1 Duration of active duty alerts.
The duration of an active duty alert shall be twelve months.

3. Add Part 614 to read as follows:

PART 614—APPROPRIATE PROOF OF IDENTITY

Sec. 614.1 Appropriate proof of identity.

§614.1 Appropriate proof of identity.
(a) Consumer reporting agencies shall develop and implement reasonable requirements for what information consumers shall provide to constitute proof of identity for purposes of sections 805A, 805B, and 600(a)(1) of the Fair Credit Reporting Act. In developing these requirements, the consumer reporting agencies must:

(1) Ensure that the information is sufficient to enable the consumer reporting agency to match consumers with their files; and
(2) Adjust the information to be commensurate with an identifiable risk of harm arising from misidentifying the consumer.
(b) Examples of information that might constitute reasonable information requirements for proof of identity are provided for illustrative purposes only, as follows:

(1) Consumer file match: The identification information of the consumer including his or her full name (first, middle initial, last, suffix), any other or previously used names, current and/or recent full address (street and name, apt. no., city, state, and zip code), full 9 digits of Social Security number, and/or date of birth.
(2) Additional proof of identity: copies of government issued identification documents, utility bills, and/or other methods of authentication of a person's identity which may include, but would not be limited to, answering questions to which only the consumer might be expected to know the answer.

By direction of the Commission.
Donald S. Clark,
Secretary.

FR Doc. 04-24169 Filed 11-2-04, 8:45 am, and Billing Code 6759-01-P

DEPARTMENT OF STATE
22 CFR Part 171
[Public Notice 4941]
RIN 1400-AB85

Availability of Information to the Public
AGENCY: State Department.
ACTION: Final rule.

SUMMARY: This rule makes final the Department's proposed rule published on March 31, 2004. The rule revises the Department's regulations governing access by the public to information that is under the control of the Department in order to reflect changes in the provisions of basic underlying laws and executive orders pertaining to access to information (i.e., the Freedom of Information Act, the Privacy Act, Executive Order 12958 on National Security Information, the Ethics in Government Act) and in the Department's procedures since the last revision of the Department's regulations on this subject. The Department received one non-substantive comment, and proposes no changes to the proposed rule. The proposed rule is therefore issued as final.

EFFECTIVE DATE: This rule is effective on November 9, 2004.

ADDRESSES: Persons wishing to make requests for information under these regulations should address such requests to: Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State, SA-2, 515 22nd St., NW., Washington, DC 20522-6001. Tel: 202-261-8500; FAX: 202-261-8590.

Persons with access to the internet may also view this notice by going to the regulations.gov Web site at http://www.regulations.gov/index.cfm.

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State, SA-2, 515 22nd St., NW., Washington, DC 20522-6001. Tel: 202-261-8500.

SUPPLEMENTARY INFORMATION: The Department's proposed rule was published as Public Notice 4853 at 69 FR 16841-16853 on March 31, 2004, with a 90-day public comment period. The Department received one non-substantive comment regarding Reading Room hours of operation, which was satisfied by the availability of the Department's FOIA Web site 24 hours a day. Additionally, while the Department does not accept FOIA requests via e-mail, we are beginning to accept requests via our Web site.

The Freedom of Information Act (FOIA), the Privacy Act (PA), and certain portions of the Ethics in Government Access Act of 1978, as amended, provide for access by the public to records of executive branch agencies, subject to certain restrictions and exemptions. 22 CFR part 171 sets forth the Department's regulations implementing the access provisions of those statutes and the Executive Order. Since the last publication of the regulations in the 1980's, there have been significant changes in the law governing access to government information, particularly with respect to the FOIA and the Executive Order. In addition, certain court decisions have been rendered that affect such access provisions.

A major revision of the Freedom of Information Act was enacted in 1966, the so-called Electronic Freedom of Information Act. The changes effected by the Electronic Freedom of Information Act amendments of 1996 included provisions with respect to the form in which agencies are required to
would deprive a person of a right to a fair trial or an impartial adjudication;

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) could reasonably be expected to disclose the identity of a confidential source;

(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; and/or

(F) could reasonably be expected to endanger the life or physical safety of any individual.

The Privacy Act (5 U.S.C. § 552a)

- Exemption § 552a(j)(2), whereby records may be withheld from disclosure which are maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

  (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders;

  (B) information compiled for the purpose of a criminal investigation; and/or

  (C) reports identifiable to an individual.

- Exemption § 552a(k)(2), whereby information compiled for law enforcement purposes, other than for the purpose of a criminal investigation, including material which, if released, would reveal the identity of a source who furnished information to the government.

Amendment rights

In accordance with § 552a(d)(2) of the Privacy Act and § 171.35, Title 22 of the Code of Federal Regulations, an individual has the right to request that the Department amend a record pertaining to her or him which the individual believes is not accurate, relevant, timely, or complete. A copy of this regulation is enclosed, if applicable.